No. 1059 44

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

FRED Y. OYAMA AND KAJIRO OYAMA, *Petitioners*,

v.

STATE OF CALIFORNIA.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA.

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Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of California entered on October 31, 1946 (R. 121) affirming the judgment of the Superior Court of California for the County of San Diego. A petition for rehearing was denied on November 25, 1946. (R. 120).

OPINIONS BELOW

The findings of fact and conclusions of law in the Superior Court (R. 58-64) are not reported. The opinion in the Supreme Court of California (R. 105-120) is reported in 29 Advance California Reports 157; 173 Pac. (2d) 794.

JURISDICTION

The judgment of the Supreme Court of California was entered October 31, 1946 (R. 121). An order denying these petitioners' petition for rehearing was en-

tered November 25, 1946 (R. 120). The constitutional issues here presented were urged in the trial court (R. 18-19, 19-21, 22-37), where they were overruled (R. 50), and in the court below (R. 105), where they were also overruled (R. 105-120). The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code as amended.

QUESTIONS PRESENTED

1. Whether the Alien Land Law, as applied in this case, deprives petitioner Fred Oyama, an American citizen, of the equal protection of the laws and of the privileges and immunities of a citizen, in violation of the Fourteenth Amendment to the Constitution.

2. Whether the Alien Land Law, as enforced and as applied in this case, deprives petitioner Kajiro Oyama, an alien of the Japanese race, of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution.

3. Whether the decision of the Supreme Court of California, holding that no statute of limitations is applicable to actions for escheat under the Alien Land Law, is not a retroactive reopening of a vested title to real estate which also violates the Fourteenth Amendment.

STATUTES INVOLVED

The relevant provisions of the California Alien Land Law (Alien Property Initiative Act of 1920, Stats. (1921) p. lxxxiii), as amended, are set out in the Appendix, *infra*.

STATEMENT

On August 28, 1944, the State of California filed a petition under the California Alien Land Law to declare an escheat to the State of certain agricultural

lands (R. 1). Fred Oyama, a minor and an American citizen (R. 59) and his father and guardian, Kajiro Oyama, an alien of the Japanese race (R. 58), who are now petitioners here, were named among several other defendants (R. 1). The petition alleged that the land in question consisted of two parcels. One was alleged to have been purchased on August 18, 1934, by Kajiro and Kohide Oyama, title being conveyed directly to Fred Oyama and a deed to that effect duly recorded (R. 2-3). The other was alleged to have been transferred to Fred Oyama on December 17, 1937, by an order of the Superior Court of San Diego County confirming the sale to Fred Oyama from the estate of June Kushino, a minor, and a certified copy of the order was duly recorded (R. 6). The petition prayed for an escheat as of the dates specified above (R. 7-8).

A demurrer having been filed (R. 18) and overruled (R. 51), the matter was tried upon the petition and answer (R. 53-55). At the trial, it was shown that on March 1, 1935, Kajiro Oyama petitioned the San Diego Superior Court to be appointed guardian of Fred Oyama stating that the latter was his minor son and was the owner of the parcel of land conveyed in 1934. On August 15, 1935 he was appointed guardian by the court and filed the necessary bond. Subsequently, with permission of the court, Kajiro Oyama borrowed money upon and mortgaged the property as guardian for Fred Oyama (P. Exh. 1).* The Clerk of the San Diego Superior Court identified the guardianship records of Fred Oyama and June Kushino, and testified that no reports had been filed with his office on behalf of Fred Oyama under the Alien Land Law (R. 83-84).

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* The exhibits are not included in the printed record, but are on file with the Clerk.

The only other witness at the trial was John C. Kurfurst, who was left in charge of both parcels of property when petitioners, along with all other persons of Japanese origin and ancestry, were evacuated from the Pacific Coast (R. 84). He testified that the Oyamas were not occupying the property at that time but rather that it was being occupied by the Kushino family (R. 81-82). After the evacuation he rented the property. Kurfurst kept all the proceeds in his own bank account, making no payments to the owner of the land until a representative of the War Relocation Authority came to discuss the matter with him (R. 84-85). Thereafter he transmitted checks amounting to $16 and $330 to Fred Oyama covering certain of the rentals minus expenses in connection with the property which he himself incurred (R. 85). These checks were returned to Kurfurst endorsed "Fred Oyama". (R. 86; P. Exhs. 3, 4). No evidence was offered proving that the signature was by anyone other than Fred Oyama, the son. On June 7, 1944, Fred Oyama advised Kurfurst by letter that the property was being turned over to someone else to be managed (R. 87; P. Exh. 6).

Although on direct examination Kurfurst testified that he knew the father as "Fred Oyama" he stated that he had never heard the father refer to himself by that name (R. 87). Moreover, on cross-examination he testified that on one occasion he had heard the father say, "Some day the boy will have a good piece of property because that is going to be valuable" (R. 90). Also, Kurfurst stated that in a letter entitled "Re: Fred Yoshihiro Oyama and June Kushino" which he wrote to the War Relocation Authority regarding the property (D. Exh. A) he meant by "Fred Oyama" the boy, not the father (R. 91-92). Also, he understood a letter written by the War Relocation Authority to Kurfurst

regarding "Fred Oyama" (D. Exh. B) to refer to the son and not the father (R. 92). Moreover, he admitted that he knew "that the father was running the boy's business" when he was in California and that "the property belonged to the boy and to June Kushino (an American-born Japanese) (R. 94). Finally, the receipts issued by the War Relocation Authority for the monies transmitted by Kurfurst (D. Exh. D) were for the account of Fred Oyama, not of Kajiro Oyama (R. 94-95).

The Decisions below. The language in which the findings of the Superior Court are couched is substantially identical to that of the charges of the State (R. 1-8). In essence the Superior Court found that the two pieces of land were purchased by Kajiro Oyama and Kohide Oyama, the boy's mother; that, although the first parcel was deeded to Fred Oyama in 1934 and recorded in his name and the estate of June Kushino transferred the second parcel to Fred Oyama in a guardianship proceeding and the order of the court authorizing the transfer to Fred Oyama was recorded, the father and mother entered into possession of the property and used it as their own, and have had the beneficial use and enjoyment of the land. The court also found that the father had not filed financial reports regarding the property under the Alien Land Law as guardian of Fred Oyama and that both transfers to Fred Oyama were subterfuges and frauds on the State. The court further found that these "acts" were done in an attempt to prevent, evade and avoid escheat and that the State was entitled to have the property declared escheated (R. 58-63).

The Supreme Court of California sustained the Superior Court principally on the basis of earli decisions of this Court holding that the exclusion of "ineli-

gible aliens" from having any interest in agricultural land is a proper exercise of the police power of the state. The court further held that Fred Oyama was denied no constitutional guarantees because the property passed to the state by virtue of deficiencies existing in the alien father, not the citizen son (R. 117). Finally, the trial court's findings of fact upon the basis of which the land was declared to escheat were found to be fully supported by the evidence (*ibid.*). Two of the seven justices did not take part in the decision; one more concurred specially solely on the ground that the decisions of this Court "are controlling until such time as they are reexamined and modified by that court." (R. 120). Judgment was entered on October 31, 1946, affirming the judgment of the Superior Court (R. 121). A petition for rehearing was filed, and was denied on November 25, 1946 (R. 120), one judge voting for the rehearing.

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of California erred:

1. In failing and refusing to hold that the California Alien Land Law of 1920, as amended, as applied in this case, deprives petitioner Fred Oyama of the equal protection of the laws and of the privileges and immunities of a citizen, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

2. In failing and refusing to hold that the California Alien Land Law of 1920, as enforced and as applied in this case, deprives petitioner Kajiro Oyama of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

3. In applying a statute by which California had removed any statute of limitations on escheat actions to an action brought subsequent to the date when the prior period of limitations had expired, in violation of the Fourteenth Amendment to the Constitution of the United States.

4. In affirming the decision of the Superior Court.

5. In failing and refusing to dismiss the petition of the State of California.

REASONS FOR GRANTING THE WRIT

The California Alien Land Law, Appendix, *infra*, first passed in 1913, was before this Court in 1923 in several companion cases in which its constitutionality as applied to various circumstances was challenged and sustained. *Frick* v. *Webb*, 263 U. S. 326; *Webb* v. *O'Brien*, 263 U. S. 313; *Porterfield* v. *Webb*, 263 U. S. 225. See also *Cockrill* v. *California*, 268 U. S. 258. This petition is designed to demonstrate that, as here applied, the statute sanctions such patently discriminatory treatment of American citizens on racist grounds as to be unconstitutional on grounds not present in the previous cases. It is also, if that be necessary, designed to secure a review of those decisions in the light of the amendments to the law since 1923, and, if need be, a reversal of those holdings now a quarter-century old.*

* The fact that legislation similar in intent and effect now exists in six other states is further reason for granting this writ. Ark. Stat. (1943) Act 47; N. M. Const. Art. 2, § 22; Ore. Comp. Laws Ann. (1940) tit. 61, § 101, Sess. Laws (1945) c. 436; Utah Code Ann. (1943), 1945 Cumul Supp. tit. 78, c. 6(a); Wash. Rev. Stat. § 10581; Wyo. Sess. Laws (1943) c. 35.

I

THE ALIEN LAND LAW, AS CONSTRUED HERE, DEPRIVES FRED OYAMA, A CITIZEN, OF THE EQUAL PROTECTION OF THE LAWS AND OF THE PRIVILEGES AND IMMUNITIES OF A CITIZEN

Fred Oyama, born in California in 1928, is an American citizen (R. 59). In 1934, he received the title to certain agricultural land in California, and in 1937 received the title to an additional tract of similar land (R. 6, 60, 62). The consideration for the land in each instance was paid by his parents (R. 60, 62), who were aliens, born in Japan (R. 58). Now, by an escheat proceeding, it is claimed that this property may be taken from Fred Oyama by the State of California. The circumstances are such that it is abundantly clear—indeed it will no doubt be admitted—that if Fred Oyama's parents had been German aliens, or British aliens, instead of Japanese aliens, Fred would still have his land. We believe it plain that the statute, as thus construed, discriminates against Fred Oyama solely because of his racial origin. As such, we believe, it offends the equal protection and privileges and immunities clauses in Section 1 of the Fourteenth Amendment. By the same token, it is even more clearly in conflict with the specific provision of Section 42 of Title 8, U.S.C., which provides, "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

A few preliminary remarks will clarify the matter. Under the law of California—at least as respects all except American citizens of Japanese ancestry—a minor child is clearly entitled to take and hold real estate of all kinds, as well as personal property. *Estate*

of Yano, 188 Cal. 645, 206 Pac. 995, 997 (1922). Moreover, as stated by the Supreme Court of California in the *Yano* case, *supra*, (206 Pac. at p. 998):

> "Delivery to, and acceptance by, an infant, will be presumed. When a deed clearly beneficial to an infant is given to him, his acceptance will be presumed, and the recording of the deed is a sufficient delivery."

In the same case, the court dealt with the possibility of a resulting trust in favor of the parent, due to his payment of the consideration, and ruled that no such trust would arise (*ibid.*). To the same effect is *People* v. *Fujita*, 215 Cal. 166, 169, 8 Pac. (2d) 1011. Finally, the court stated (*ibid.*):

> "The act of petitioner, in securing conveyances of land to his daughter, while confessedly carried out because the law of California did not permit him to buy it for himself, was in no sense unlawful, since the daughter is a citizen of the United States and entitled to acquire and own real estate."

We have, then, a situation where, by state law, it is recognized not only that it is proper for a parent to make an effective gift of real estate to a minor child, but that there is, even in the case of an ineligible alien parent, no taint of illegality in the transaction. It is lawful, normal, and proper in all respects.

Fred Oyama, however, although he received the record title to the land in question, had the misfortune of being, in California, by reason of the decision of the California courts in the instant case, something less than a full American citizen, because his father and mother were Japanese. Had he been Fred Johnson, he would have grown to manhood in full ownership of his land; no procedure of the State of California could have deprived him of it without adequate compensa-

tion. Being Fred Oyama, he was faced with the necessity of defending the gift he received against the claim of the state that the property had in reality gone to his parents, and thence to the state by virtue of Section 7 of the Alien Land Law, *infra*. Unlike other children, his acceptance of the land will *not* be presumed (*cf. Estate of Yano*, quoted *supra*); he must prove that he got it. This, alone, it would appear, denies to him the equal protection of the laws.

We need not stop there, however. An examination of the facts upon which the court below relies serves to emphasize the severity of the handicaps under which Fred Oyama, as compared with Fred Johnson, labors. The evidence is summarized by the court at R. 117-118, and it will repay careful analysis.

1. The court refers to four items of "evidence", and states that "the inferences to be drawn from [them] * * * are ample" to support the trial court's finding of a violation of the statute. The first item referred to is (R. 117);

> "* * * the evidence that the real property was conveyed to the son, thereby putting it beyond the power of the father to deal with the property directly, * * *

With due respect, we utterly fail to see how, if that be evidence *against* the validity of the transaction, Fred Oyama ever had a chance. The California law requires, albeit we think unconstitutionally, that ineligible aliens not own or have the use of agricultural land. Yet the court states that a conveyance *to the son*, an American citizen, which put it beyond the reach of the ineligible alien, is evidence from which an inference can be drawn that the transaction was merely colorable. That "evidence" will exist in every case; Fred

Oyama can *never* receive agricultural land purchased for him by his parents, because the very act by which they attempt not to violate the statute is evidence that they in fact do violate it.

2. The next item of evidence from which the inference is drawn is (R. 117):

> "* * * the father's failure to file the reports required of a guardian".

Fred Oyama, in other words, may lose his gift because of what *someone else* does later. If Fred Johnson's father as his guardian failed to file reports, nothing would happen to anyone but Fred Johnson's father; he would be subject to the discipline of the court for failure to file, just as is Fred Oyama's father. Fred Oyama is in the position of meeting this charge that his guardian failed to file reports only because the property given to him was of a character that his father could not own. He is subject to an additional burden, that of, presumably, acting as a guarantor of his guardian's conduct, simply because he is "the minor child of such [ineligible] alien". Fred Johnson need not worry; Mr. Johnson can be as illegal and as careless as he pleases, and it creates no inference that he is recanting in his gift of the property to his son. Mr. Oyama's conduct, in California, can be used; ten years later, to bolster the effort of the state to deprive Fred Oyama of his property in its entirety.

Moreover, another comment is warranted on the reports. Originally, by Section 4 of the 1920 amendments to the Alien Land Law, Fred Oyama's father could not have been his guardian at all; he was prohibited by law. That was declared unconstitutional by the California courts in *Estate of Yano, supra*, in 1922. But in that same 1920 Act, by Section 5, the persons

other than an ineligible alien parent, who might under the 1920 Act be appointed, were required to file reports annually. Not until 1943 did the law provide a system of annual reports by an ineligible alien-guardian in a revised Section 4.

It may well be true, therefore, that Fred Oyama's guardian did not, until 1943, understand that he was under any obligation to file any reports under a section enacted in a statute which expressly excluded him from its operations. The fact that the court, although he was known to be guardian, did not, so far as appears, take any action to compel the reports, lends credence to this, as does the fact that no action was taken against him under the criminal sanctions of Section 5 by the District Attorney. And in the short interval between the imposition of the obligation to file the reports required by Section 4 in 1943 and the filing of this action on August 28, 1944, the father was detained in a relocation camp, physically removed from California and the supervision of his son's land. Moreover, the record shows that from the time of the father's removal from California until February 10, 1944, he received no proceeds from the property (R. 81, 84, 85; P. Exhs. 3 and 4).

3. The third item of evidence relied on by the court below is (R. 117):

> "* * * the unexplained failure of the father, or any one of the defendants, to offer himself as a witness, * * *"

Again, Fred Oyama stands to lose his gift because of something that someone else has done. Again he is made the guarantor of his father's conduct. The father never claimed that he had any interest in the property. We see no basis for an obligation on his part to "offer

himself as a witness". In addition, it certainly must be admitted by the state that it is drawing a long bow when it attempts by conduct of others in 1945 to destroy the validity of the deeds and other evidences of title that Fred Oyama received over ten years before.

4. The fourth and final item of "evidence" relied upon by the court below is (R. 117-118):

> "* * * the presumption created by Section 9 of the Alien Land Law." *

Two comments are appropriate. First, and most obvious, Fred Oyama must face a burden which Fred Johnson need not face, and he must face this burden solely because of his race—because his parents are Japanese. A gift by a parent to a child is a normal, usual and expectable occurrence; consequently in the case of the child whose parents are British aliens, no burden is cast upon the citizen to prove his gift. In the case of a child who, though also an American citizen, has parents who are Japanese, the gift may be defeated unless the child can come forward and adduce affirmative proof as to the intent of his parents. Patently, the presumption operates unequally on different classes of citizens. Nothing in *Cockrill* v. *California*, 268 U.S. 258, in which the validity of this presumption was sustained in a criminal case, is inconsistent with this view; the point here at issue was not there involved. Here we have a gift made by a father to his son—a natural

* Section 9 of the Alien Land Law provides.

> "A prima facie presumption that the conveyance is made with such intent shall arise upon proof of any of the following group of facts:
>
> "(a) The taking of the property in the name of a person other than the persons mentioned in Section 2 hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in Section 2 hereof;"

and expectable occurrence. Whatever justification there may be for applying a presumption such as this to a gift to a stranger, certainly the policy considerations do not apply with equal force here. Fred Oyama has a right to expect gifts made to him to be treated at their face value, just as Fred Johnson does. Moreover, it may be questioned that the decision in the *Cockrill* case is sound; certainly there is no more reason to suppose that the recipient of a gift is in any better position than the State to adduce evidence on the mental state of the donor. *Cf. Morrison* v. *California*, 291 U.S. 82, in which another presumption created by Section 9a of the Alien Land Law was held to violate the Fourteenth Amendment.

The other comment which should be made is on the nature of the burden thus imposed on Fred Oyama. Even if the mere existence of the presumption is not enough to destroy equal protection of the laws, certainly that conclusion follows when, as here, the presumption is given such overwhelming effect.

This presumption does not vanish when evidence is introduced. Without fully reciting the proof, suffice it to say here that there was testimony by John Kurfurst, one of the defendants, that he understood that the land in question belonged to Fred Oyama, that receipts for income from the land were signed by Fred Oyama, that Fred Oyama's father had told him that it was Fred's land and that he knew the father was running the boy's business (See R. 80-97). Despite evidence bearing on the issue, the trial judge stated (R. 103):

> "I think that there is only one way I could determine this matter under this evidence and that would be simply to hold, that the plaintiff has, by the application of the inference, the statutory inference, the presumption, and by the evidence that has been produced here, has maintained the pre-

ponderance of the evidence and that judgment before the plaintiff."

And, as we have already stated, in the court below the presumption was likewise deemed to be "evidence" from which *inferences could be*, and were, drawn (R. 117-118). Fred Oyama, in other words, goes in the trial of his case with one strike against him; Section 9 is not a matter of going forward with evidence, but itself constitutes affirmative proof of the state's case. Fred must not establish only by the preponderance of the evidence the intent of his father; he must establish this intent by what, we suppose, is enough evidence to overrun both the state's evidence and the presumption. Just how this could ever be done in a matter when the inquiry relates to something already so difficult as "intent to prevent, evade or avoid" escheat is a matter which must remain highly speculative. Certainly, given the attitude of the courts below it may be doubted whether it could ever be accomplished. How can Fred Oyama be expected to prove that his father, in making a gift to him of land, did not intend to "prevent" escheat? Everything which the father would do in making the gift to try to make it a valid one would by the very terms of the statute be evidence *against* Fred in his attempt to maintain title against the state. In this respect, the presumption appears to become, for all practical purposes, conclusive, and certainly, as such, unconstitutional under *Heiner* v. *Donnan*, 285 U. S. 312.

In summary, we submit that the Alien Land Law, as here applied, denies to Fred Oyama, a citizen of the United States, the protection of the laws equal to that which is applied to Fred Johnson and, of the privileges and immunities possessed by Fred Johnson. Each receives a deed to a parcel of land paid for by his father

as a gift to him while still a minor. Fred Johnson has his; he need not worry thereafter, for the State of California will not only not try to deprive him of it but will in fact use its machinery of justice to make sure that it and its income is held for him properly and safely. Fred Oyama, quite the contrary. He must defend it against a claim that he never got it. He must face the realities of life: that the state can use as evidence *against* him the fact that his father did not keep title in himself and that his father may be remiss in his conduct thereafter, even many years thereafter, by failing to carry out his statutory duties as guardian, or by failing to come in and offer himself as a witness in the proceeding. And, if he is really realistic, he will recognize that he is presumed to be not the owner anyway, and must meet a formidable, if not impossible, burden of proof—a burden which continues to exist as evidence against him all the way to the Supreme Court of his state. Is this, in truth, the "protection of equal laws"?

It may be said that Fred Oyama is no worse off than Fred Johnson, because Fred Johnson would be in the same position as Fred Oyama if Mr. Oyama had given his property to Fred Johnson. That we agree, is true, but it is wholly unrealistic. One cannot ignore the parent-child relationship. Fred Oyama, as an American citizen, has every right to expect that the normal, usual, human relations will be permitted to him, as well as to anyone else. Not so, under this law. His father, under the decision below, cannot make gifts to him of land like this. The expectancy of parental assistance is, *pro tanto*, denied him. Maybe it is true that Fred Johnson can't get gifts from Mr. Oyama, nor that anyone else can get such gifts, without being subject to the same disability. But those persons have not suffered thereby; they have no reason to expect such gifts. Fred Oyama

does. He is denied one of the privileges inhering in every other citizen except those whose parents happen to be Japanese—the privilege of the unlimited bounty of parents anxious, as are all parents, to advance his welfare as best they can. A law which thus discriminates against him cannot meet the tests which our Constitution guarantees.

II.

THE ALIEN LAND LAW, AS APPLIED AND AS CONSTRUED IN THIS CASE, DEPRIVES KAJIRO OYAMA, AN ALIEN OF JAPANESE RACE, OF THE EQUAL PROTECTION OF THE LAWS

The State of California takes the position that the ineligibility of Oyama the father to have any beneficial interest whatsoever in agricultural land determines the right of Oyama the son to receive a gift of such land from his father. But even assuming that the transfer of the land to Fred Oyama was colorable merely and that the beneficial interest in the property was in Kajiro Oyama, we believe that the escheat action must nonetheless fail. The Alien Land Law, as applied and as construed in this case must be held to violate the Constitution of the United States.

The ban against holding any interest in agricultural land is race legislation aimed directly at the Japanese. Use of the term "aliens ineligible to citizenship" is merely a veil which this Court will pierce. *Yu Cong Eng* v. *Trinidad*, 271 U. S. 500, 525, 528. The Supreme Court of California has declared that the object of the Alien Land Law is "to discourage the coming of Japanese into the State." *Estate of Yano*, 188 Cal. 645, 658, 206 Pac. 995, 1001. The same form of words, with unmistakable intent to affect only Japanese, is apparent in

other California statutes. As recently as 1943 the California Legislature enacted a statute discriminating against Japanese aliens by name in connection with fishing licenses. Cal. Stats. (1943) c. 1100. The matter was considered further by the California Legislature and in 1945 a Senate Committee reported that there was "danger of the present statute being declared unconstitutional, on the grounds of discrimination, since it is directed against alien Japanese." The Committee recommended that the legal question could "probably be eliminated by an amendment which has been proposed to the bill which would make it apply to *any alien who is ineligible to citizenship.*" [Italics supplied.] Report of the Senate of California, May 1, 1945, pp. 5, 6. The law was so amended. Cal. Stats. (1945) c. 181.

Not only is the statute intended to apply solely to Japanese, but it is enforced solely against them by the state. *Yick Wo* v. *Hopkins,* 118 U. S. 356, 374; *Hill* v. *Texas,* 316 U. S. 400, 404. There are 39 reported cases decided in the California appellate courts involving the Alien Land Law; of these only 5 affected non-Japanese aliens and none of these 5 were proceedings brought by the state. Since the evacuation of the Japanese from California approximately 60 proceedings have been instituted under the statute and every one has been filed against a Japanese.

Finally, it should be noted that—whatever color of propriety may once have existed in the words "aliens ineligible to citizenship"—the successive narrowing of this group by Congress through amendment of the Naturalization Laws has left this restriction applicable, for practical purposes, to but one racial group in California, the Japanese. Formerly the right to become a naturalized citizen was denied, with minor exceptions to all but white persons and persons of African nativity

or descent. R. S. § 2169; Act of February 18, 1875, c. 80, § 1, 18 Stat. 318; Act of May 9, 1918, c. 69, § 2, 40 Stat. 547. Descendants of all races indigenous to the Western Hemisphere were removed from the restriction by the Act of October 14, 1940, c. 876, § 303, 54 Stat. 1140. More recently, the ban against the Chinese (Act of December 17, 1943, c. 344, § 3, 57 Stat. 601) and the Filipinos and peoples indigenous to India (Act of July 2, 1946, c. 534, § 1, 60 Stat. 416; U. S. Code Cong. Service (1946) p. 401) was removed.

It is clear therefore that the Alien Land Law discriminates against aliens of Japanese origin, that this is its purpose, that it has been so administered by the State of California and that this is its necessary effect in view of the changes in the Naturalization Laws. The question is whether such discrimination is left untouched by the requirements of the 14th Amendment to the United States Constitution.

For support of this discrimination the State of California relies on a series of companion cases decided by this Court in the 1923 term, in which the constitutionality of the Alien Land Law was sustained. *Porterfield* v. *Webb*, 263 U. S. 225; *Webb* v. *O'Brien*, 263 U. S. 13 and *Frick* v. *Webb*, 263 U. S. 326. *Terrace* v. *Thompson*, 263 U. S. 197, which was relied upon in these cases, was the only decision which discussed the constitutional issue at any length. It involved a Washington statute which prohibited the holding of any right to or benefit in land by all aliens, except those who in good faith declared their intention to become United States citizens. Mr. Justice Butler passed over the contention that the state discriminated arbitrarily against one of the defendants who was of Japanese origin because of his race and emphasized that the adoption by the state of a classification for purposes of land ownership which dis-

tinguished between aliens on the basis of eligibility to citizenship was proper. Mr. Justice Butler accepted without analysis the reasoning of the District Court of the Western District of Washington that one who could not become a citizen "lacks an interest in, and the power to effectually work for the welfare of, the state" and that, thus, the "state may rightfully deny him the right to own and lease real estate within its boundaries," since, otherwise, "it is within the realm of possibility that every foot of land within the state might pass to the ownership or possession of non-citizens." *Id.* at 220-221.

Whatever may have been the Supreme Court's understanding of the purport of this legislation in 1923, this Court should now meet clearly the fact that we are dealing with a statute—not really addressed to a theoretically broad class of ineligible aliens—but which is aimed in intent and application at but one race. Certainly the State of California should not be permitted to do by indirection what it cannot do directly.

This Court has repeatedly held that in cases involving civil liberties a much more rigid test will be applied to state action than in cases involving the normal regulation of ordinary commercial transactions. *Thomas* v. *Collins*, 323 U. S. 516, 527, 529-532; *Schneider* v. *Irvington*, 308 U. S. 147, 161; *Thornhill* v. *Alabama*, 310 U. S. 88, 95-96. An intrusion by a State in this domain can be supported "only if grave and impending public danger requires this." *Thomas* v. *Collins*, *supra*, p. 532. The Alien Land Law should be judged by this test. In intent and effect on the lives of aliens of Japanese origin it is not distinguishable from the kind of legislation which this Court has struck down as not meeting this test. As this Court said in *Korematsu* v. *United States*, 323 U. S. 214, 216:

> "It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. * * * Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can."

But whether "the clear and present danger rule" or the "reasonable classification rule" be applied, the Alien Land Law meets neither test. A statutory classification made for purposes of discrimination is proper only when there is a reasonable relationship between the characteristics distinguishing the class, the discrimination and the evils at which the legislation is addressed. *Atchison, Topeka & Santa Fe* v. *Mathews*, 174 U. S. 96, 104-105; *Smith* v. *Cahoon*, 283 U. S. 553, 556-557. Here the class purports to be "all aliens other than those * * * eligible to citizenship." Alien Land Law, Sections 1 and 2. The discrimination is the ban which deprives them of the right to "acquire, possess, enjoy, use, cultivate, occupy [or] transfer [agricultural land] or any interest therein, * * * [or] have in whole or in part the beneficial use thereof * * *". Alien Land Law, Section 2; Treaty of Commerce and Navigation between the United States and Japan, proclaimed April 5, 1911, 37 Stat. 1504. The stated purpose, according to the Supreme Court of California, is that recited by Mr. Justice Butler in *Terrace* v. *Thompson, supra*, pp. 220, 221 (R. 114-115).

That there is a class of aliens ineligible to citizenship generally identifiable as such is, of course, conceded, albeit the "ineligible alien" language is but a subterfuge for a classification that, in intent and actual practice, is limited to a class within the class. But the mere existence of distinguishing characteristics—whether they be of the Japanese class within the class

or of the purported broader class of "ineligible aliens" —does not of itself support the discrimination. In the absence of a clear justification for the discrimination it must fall.

The classification is no less arbitrary because it adopts by reference the standards established by Congress for naturalization of aliens. The measure of the authority of the state to discriminate in the ownership of land is not that of the specific authority vested in the Congress over naturalization under Article I, Section 8. The use of the "ineligible alien" classification by the state must meet the requirements of the 14th Amendment on its own merits. Moreover, this classification can certainly not be used as a cloak for specific discrimination against Japanese alone.

Nor should there be any doubt as to the nature of the discrimination. No broader language could have been designed to make more absolute the ban against the use of agricultural land by Kajiro Oyama. No special use is forbidden which a legislature might determine to be against public policy—abuse of land might properly be prevented by limits on use; harmful occupation or nuisances might be controlled or regulated. Indeed, if danger to the state be the issue, use of land adjacent to military or naval stations might be denied. But when every kind of land use is forbidden, the legislation is necessarily being aimed not at use *as such*, but at the class, and such legislation is improper. *Buchanan* v. *Warley*, 245 U. S. 60, 74, 82.

What, then, is the purpose of the Alien Land Law in excluding Japanese from holding any kind of interest in agricultural land? The Supreme Court of California has told us that it is to "discourage the coming of Japanese into the state . . ." *Estate of Yano, supra*, p. 1001. This alone is sufficient to seal its legal doom. Although

this explanation is not sufficient under the Constitution, it is perhaps more credible than the explanation that "one who is not a citizen and cannot become one lacks an interest in, and the power to effectively work for the welfare of, the state", and that, without the ban, "every foot of land within the state might pass to the ownership or possession of non-citizens". *Terrace* v. *Thompson, supra,* pp. 220-221; applied with respect to the California Alien Land Law by Mr. Justice Butler in *Porterfield* v. *Webb, supra,* p. 233, and adopted by the California Supreme Court in this case (R. 115). See also *Mott* v. *Cline,* 200 Cal. 434, 253 Pac. 718, 724, where the California Supreme Court stated that the "ownership of the soil by persons morally bound by obligations of citizenship is vital to the political existence of a state." The fact that a farmer such as Kajiro Oyama, living in this country, devoting his life to the soil and raising children who are privileged to be American citizens, cannot himself exercise this privilege has nothing to do with his character or his loyalty to the United States. These very meaningful words of this Court are applicable to Kajiro Oyama:

> "* * * Nothing in this record indicates, and we cannot assume, that he came to America for any purpose different from that which prompted millions of others to seek our shores—a chance to make his home and work in a free country, governed by just laws, which promise equal protection to all who abide by them." (*Ex parte Kawato,* 317 U. S. 69, 71.)

It is by an act of Congress, not one of personal volition, that Kajiro Oyama cannot become a citizen. The German alien or the British alien may hold agricultural land in California. There is nothing about the Japanese alien to distinguish him from the German alien or

the British alien except his race and color. But "loyalty is a matter of the heart and mind, not of race, creed, or color". *Ex parte Endo,* 323 U. S. 283, 302. Would the mere fact of eligibility to citizenship automatically create a presumption of loyalty or of good character where there was neither loyalty nor good character before? On the contrary, it would seem that one eligible to citizenship who has not declared his intention of becoming a citizen would be more suspect than one ineligible for reasons beyond his control. As a farmer in and resident of the State of California, the welfare of that state is the welfare of Kajiro Oyama. He exercises the rights of a citizen except for political rights. Perhaps as a member of a minority group deprived of these rights, his appreciation of them is even greater than that of many citizens. If it is a desire to promote in its inhabitants "an interest in, and the power to effectively work for, the welfare of the state" that prompts California, then the paradox is that by this very legislation the state limits that interest and that power so far as the Japanese alien is concerned.

Certainly the possibility that all of the land in the state might be owned by ineligible aliens is no argument for the constitutionality of this measure. This possibility is so remote as hardly to require consideration. The Alien Land Law was first enacted in 1913, and the children and grandchildren of Japanese aliens are citizens and eligible to hold land. In 1940 there were only 33,569* Japanese aliens in California as compared to a total population of 6,907,387**. If the "ownership of the soil by persons morally bound by obligations of cit-

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* Final Report, Japanese Evacuation from the West Coast (1943), p. 410.

** United States Census (1940).

izenship is vital to the political existence of a state", this would not justify banning but a handful of one race of aliens from the land.

Finally, is ownership of agricultural land any more vital to the political existence of the state than ownership of factories or stores? Such ownership by Japanese aliens is permitted under the Alien Land Law. This Court will take judicial notice of the fact that the State of California still exists politically even though such ownership has continued to the present day. Moreover, the vast majority of states have no such limitations as are considered here and comparison with California shows no injury by reason of alien land ownership.

III

THE DECISION OF THE COURT BELOW, IN DENYING PETITIONERS THE PROTECTION OF THE CALIFORNIA STATUTE OF LIMITATIONS, DENIES THEM DUE PROCESS OF LAW

Section 312 of the Code of Civil Procedure of California provides:

> "Civil actions, without exception, can only be commenced within the period prescribed in this title, after the cause of action shall have accrued, unless where, in special cases, a different limitation is prescribed by statute."

A later section of the Code makes clear that "action" is not used in any restrictive fashion. Section 363 states:

> "The word 'action' as used in this title is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature."

Various periods of limitation are set out for various types of civil actions. The longest period of limitations is that contained in Section 315. It provides:

> "The people of this state will not sue any person for or in respect to any real property, or the issues or profits thereof, by reason of the right or title of the people to the same, unless—
>
> "1. Such right or title shall have accrued within ten years before any action or other proceeding for the same is commenced; or,
>
> "2. The people, or those from whom they claim, shall have received the rents and profits of such real property, or some part thereof, within the space of ten years."*

Petitioners relied upon the statute of limitations with respect at least to the property transferred to Fred Oyama in 1934, more than ten years prior to the date of institution of this suit. The court below, however, managed the extraordinary conclusion that no statute of limitations applied. The court stated (R. 119):

> "* * * the 'different limitation' mentioned in section 312 clearly should be construed to include no limitation as to an action commenced under a statute which specifies that time shall not bar the right to invoke its provisions."

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* The Code also applies a one-year statute of limitations to "An action upon a satute for a forfeiture or penalty to the people of this state" (Section 340), and a three-year limitation to actions for relief on the ground of fraud (Section 338(4)).

The court relies upon a section of the Alien Land Law which was not in that law when this action was commenced, and which was not in the law when the 10-year period expired on the tract acquired by Fred Oyama in 1934. The new provision, which was added to the legislation in 1945, provided:

> "No statute of limitation shall apply or operate as a bar to any escheat action or proceeding now pending or hereafter commenced pursuant to the provisions"

of the Alien Land Law. The 1945 Act further stated, "The amendment made by this act does not constitute a change in, but is declaratory of, the pre-existing law."

It is true that the court below stated that even prior to this 1945 provision the Alien Land Law was "inconsistent with a statute of limitations". It may be doubted whether under the provisions above quoted any such construction is within even the realm of judicial interpretation. "Civil actions, without exception," is language which seems scarcely susceptible of construction. In any event, it seems apparent that the court below relies upon the 1945 amendments to a very considerable extent.

If that be so, it is submitted that the lifting of the bar of the statute of limitations to destroy title which Fred Oyama or Kajiro Oyama had in real estate prior to the passage of that act is unconstitutional. *Campbell* v. *Holt*, 115 U. S. 620; *Chase Securities Corp.* v. *Donaldson*, 325 U. S. 304.

CONCLUSION

WHEREFORE, it is respectfully requested that this petition for a writ of certiorari to the Supreme Court of California be granted.

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APPENDIX

The California Alien Land Law (Alien Property Initiative Act of 1920, as amended, Stats. (1921) p. lxxxiii, in effect December 9, 1920; amended by Stats. (1923) c. 441, p. 1020; Stats. (1927) c. 528, p. 880; Stats. (1943) c. 1003, p. 2917, c. 1059, p. 2999; Stats. (1945) c. 1129, p. 2114, c. 1136, p. 2177; Deering's Gen. Laws, Act 267) provides in part as follows:

"Sec. 1. All aliens, eligible to citizenship under the laws of the United States may acquire, possess, enjoy, use, cultivate, occupy, transfer, transmit and inherit real property, or any interest therein, in this state, and have in whole or in part the beneficial use thereof, in the same manner and to the same extent as citizens of the United States, except as otherwise provided by the laws of this state. (Amended by Stats. 1923, p. 1021.)

"Sec. 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy, use, cultivate, occupy and transfer real property, or any interest therein, in this state, and have in whole or in part the beneficial use thereof, in the manner and to the extent, and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise. (Amended by Stats. 1923, p. 1021.)

* * * * *

"Sec. 4. Whenever any alien mentioned in Section 2 hereof is appointed by any court as a guardian of his native-born minor child or children, or as a guardian of any other person or persons, it shall be unlawful for such said alien guardian to farm, operate or manage any land or lands held by such guardianship estate, except solely for the use and benefit of the ward or wards of said estate, or to enjoy, possess or have, in whole or in part, the beneficial use of any such said land or lands so held or possessed or which belong to any such said guardianship estate, nor shall said alien guardian

have or enjoy or receive directly or indirectly the beneficial use of such said lands or the proceeds received from the sale of any crops produced, grown or raised thereon, it being the intent of this section that no alien mentioned in Section 2 hereof shall by any guardianship proceedings whatsoever evade or violate or seek to evade or violate any of the provisions of this statute.

"In all such said guardianship estates, the alien guardian must make every year a report to the court in which said guardianship estate is pending, showing in detail and supported by receipts, all money disbursed, expended and paid out by said guardian, to whom same was paid, for what purpose, and the date of such said disbursement or payment. Also all money received, from whom received, for what purpose received, and the date of the receipt thereof. A copy of said report shall be served by the guardian on the district attorney of the county, and said guardian shall give said district attorney notice of the hearing of said report. Failure on the part of the said alien guardian so to make such report, or serve such copy thereof, or notify such district attorney shall constitute a direct violation hereof, for which said guardian may be prosecuted and punished as set forth in Section 10a of this act.

"Said alien guardian shall include in such report such other matters and items as the court may require, the said alien guardian to be under the absolute jurisdiction and control of the court at all times, and the court may from time to time require said alien guardian to make special reports on all things pertaining to said guardianship estate. The court may also require the ward of any such said guardianship estate to be produced in court whenever said court may deem such procedure necessary and proper for the protection of said guardianship estate.

"The court shall have the power to fix the compensation of the said alien guardian at such amount as the court may determine. The court shall also fix the amount of bond to be given by said alien guardian. The court shall also fix and determine the amount of attorney's fees in all such guardianship matters.

"Whenever any alien guardian shall fail, neglect or refuse to comply with the terms and provisions hereof, he may be removed as guardian of said estate by the court, when deemed to be for the best interests of said estate.

"The court shall require a final account to be filed on behalf of any such guardianship estate at the time the ward or wards shall become 21 years of age. The court may also require such matters to be included in said report as said court may deem to be necessary and proper. No such guardianship estate shall be finally closed until the final report shall have been filed and approved by the court. (As amended by Stats. 1943, Ch. 1059, Secs 1, 2.)

"Sec. 5. (a) The term 'trustee' as used in this section means any person, company, association or corporation that as guardian, trustee, attorney in fact or agent, or in any other capacity has the title, custody or control of property, or some interest therein, belonging to an alien mentioned in section two hereof, or to the minor child of such alien, if the property is of such a character that such alien is inhibited from acquiring, possessing, enjoying, using, cultivating, occupying, transferring, transmitting or inheriting it.

(b) Annually on or before the thirty-first day of January every such trustee must file in the office of the secretary of state of California and in the office of the county clerk of each county in which any of the property is situated, a verified written report showing:

(1) The property, real or personal, held by him for or on behalf of such alien or minor;

(2) A statement showing the date when each item of such property came into his possession or control;

(3) An itemized account of all such expenditures, investments, rents, issues and profits in respect to the administration and control of such property with particular reference to holdings of corporate stock and leases, cropping contracts and other agreements in re-

spect to land and the handling or sale of products thereof.

(c) Any person, company, association or corporation that violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(d) The provisions of this section are cumulative and are not intended to change the jurisdiction or the rules of practice of courts of justice.

* * * *

"Sec. 7. Any real property hereafter acquired in fee in violation of the provisions of this act by any alien mentioned in Section 2 of this act, or by any company, association or corporation mentioned in Section 3 of this act, shall escheat as of the date of such acquiring, to, and become and remain the property of the State of California. (As amended by Stats. 1945, Ch. 1129.)

* * * *

"Sec. 8.5. No statute of limitations shall apply or operate as a bar to any escheat action or proceeding now pending or hereafter commenced pursuant to the provisions of this act. (Added by Stats. 1945, Ch. 1136, Sec. 1.)

(The statute adding this section provides further: "Sec. 2. The amendment made by this act does not constitute a change in, but is declaratory of, the pre-existing law.")

"Sec. 9. Every transfer of real property, or of an interest therein, though colorable in form, shall be void as to the State and the interest thereby conveyed or sought to be conveyed shall escheat to the State as of the date of such transfer, if the property interest involved is of such a character that an alien mentioned in Section 2 hereof is inhibited from acquiring, possessing, enjoying, using, cultivating, occupying, transfer-

ring, transmitting or inheriting it, and if the conveyance is made with intent to prevent, evade or avoid escheat as provided for herein.

"A prima facie presumption that the conveyance is made with such intent shall arise upon proof of any of the following group of facts:

"(a) The taking of the property in the name of a person other than the persons mentioned in Section 2 hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in Section 2 hereof;

"(b) The taking of the property in the name of a company, association or corporation if the memberships or shares of stock therein held by aliens mentioned in Section 2 hereof, together with the memberships or shares of stock held by others but paid for or agreed or understood to be paid for by such aliens, would amount to a majority of the membership or issued capital stock of such company, association or corporation;

"(c) The execution of a mortgage in favor of an alien mentioned in Section 2 hereof if such mortgagee is given possession, control or management of the property.

"In each of the foregoing instances the burden of proof shall be upon the defendant to show that the conveyance was not made with intent to prevent, evade or avoid escheat.

* * * *

"The enumeration in this section of certain presumptions shall not be so construed as to preclude other presumptions or inferences that reasonably may be made as to the existence of intent to prevent, evade or avoid escheat as provided for herein. (Amended by Stats. 1945, Ch. 1129, Sec. 4)"

* * * *